

Appl. No. 10/690,187
Resp. Dated Mar. 14, 2005
Reply to OA of Nov. 12, 2004

REMARKS/ARGUMENT

I. Status of the Claims

Claims 1-27 are pending.

Claims 1-27 are rejected.

II. Claim Objections

Claims 10, 11 and 21 are objected to for containing informalities. Applicants amend claims 10, 11 and 21 and respectfully request reconsideration and removal of the objection.

III. Rejections Under 35 U.S.C. § 102

Claims 1, 3-5, 7, 9-13 and 15-27 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Carney, III et al. (US 6,637,971) herein after the "Carney '971 patent." The Applicants amend claims 1, 17 and 24 to more particularly point out the applicants' invention. The Carney '971 patent does not teach the use of a mid filler attachment with an ohm shaped cross section or an arm being affixed to the mid filler attachment. The Carney '971 patent does not teach each and every element of amended independent claims 1, 17 and 24. Reconsideration and removal of the rejection of claims 1, 3-5, 7, 9-13 and 15-27 are respectfully requested.

Appl. No. 10/690,187
Resp. Dated Mar. 14, 2005
Reply to OA of Nov. 12, 2004

Claims 1-3, 5-10, 12, 14-19, 21, 23-25 and 27 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Berk (US 2,047,992) herein after the "Berk '992 patent." The Applicants amends independent claims 1, 17 and 24 to more particularly point out what the applicants consider to be their invention.

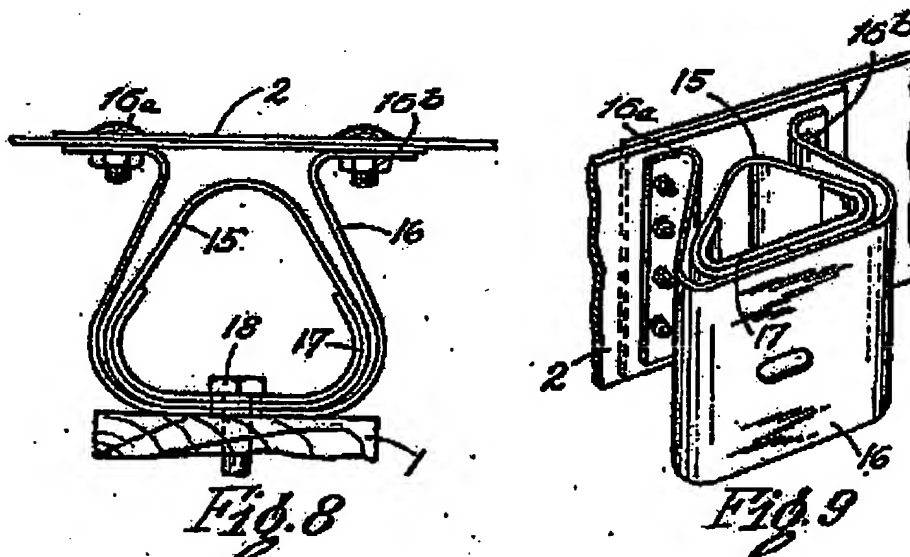
The Applicants amend independent claims 1, 17 and 24 to point out elements of the invention that are not taught by the Berk '992 patent. The Berk '992 patent teaches the following about figures 8 and 9 on page 1, column 2 lines 15 to 55:

Figures 8 and 9 illustrate a modified form of post spring connection including a tubular spring 15, and a curved spring member 16 secured at its midportion to the posts 1, surrounding the tubular spring 15 and spaced therefrom, and normally supporting the rail 2 out of contact with the tubular spring. The ends of the spring 16 are secured to the rail 2 as at 16a and 16b. A supplemental spring 17 may be positioned within the spring 15, if desired. The springs 15, 16 and 17 are secured to the post by means of bolt 18.

When light loads are applied to the rail at an angle either between the posts or at one of the posts, the rail supporting springs and the end tensioning springs cooperate to resist and absorb such loads. When the loads are in excess of the load resisting ability of the rail supporting springs, the rail moves laterally and contacts with the tubular springs. Thereupon, the tubular springs as well as all the springs cooperate to resist and absorb such heavy loads applied longitudinally as well as transversely of the rail. For example in the post spring construction illustrated in Figures 5, 6, and 7 the slot 6 permits the rail to move longitudinally to a limited extent under light loads applied to the rail. When under excessive loads the rail tends to move

Appl. No. 10/690,187
 Resp. Dated Mar. 14, 2005
 Reply to OA of Nov. 12, 2004

beyond said limited extent, the spacer blocks 7 engage the vertical side of the slots 6, and there-upon the tubular springs 3 also resist further longitudinal movement of the rail. Similarly, light loads applied transversely of the rail move the rail toward the posts. This movement is resisted by the springs 4 until the rail contacts with springs 3 when that spring also resists further movement of the rail. In the modified post spring construction illustrated in Figures 8 and 9 when light loads are applied longitudinally as well as laterally of the rail the rail supporting springs 16 permit the rail to move longitudinally as well as laterally to a limited extent and such light loads are resisted and absorbed by the springs 16 and the end springs 13. When loads are applied to the rail which are greater than the load resisting ability of the springs 16 these springs yield and the rail comes into contact with the tubular springs 15. The tubular springs 15 resist and absorb the heavy loads. In this way the end and rail supporting springs cooperate to resist and absorb the light loads while all the springs cooperate to resist and absorb heavy loads. (Emphasis added)



Appl. No. 10/690,187
Resp. Dated Mar. 14, 2005
Reply to OA of Nov. 12, 2004

The highlighted portions presented above of the Berk '992 patent teaches that the elements contained in figures 7-9 are meant to resist force and not absorb force by crushing. The Applicants' specification clearly teaches, and now particularly points out and claims that the mid-filler section deforms irreversibly upon impact to reduce harm to the vehicle and occupants of the vehicle that impact the Applicants' claimed invention. Patent law is clear that it is the overall teaching of the prior art and not random elements. The Berk '992 patent now teaches away from the Applicants claimed invention.

Claims 1-3, 5-10, 12, 14-19, 21, 23-25 and 27 as amended are not taught by the Berk '992 patent. Reconsideration and removal of the anticipation rejection of claims 1-3, 5-10, 12, 14-19, 21, 23-25 and 27 is respectfully requested.

Appl. No. 10/690,187
Resp. Dated Mar. 14, 2005
Reply to OA of Nov. 12, 2004

IV. Rejections Under 35 U.S.C. § 103(a)

Claims 4, 11, 13, 20, 22 and 26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Berk (US 2,047,992) herein after the "Berk '992 patent." The Berk '992 patent does not teach each and every element of amended independent claims 1, 17 and 24 as discussed above. Claims 4, 11, 13, 20, 22 and 26 depend from amended independent claims 1, 17 and 24, which are allowable over the Berk '992 patent.

Furthermore, the examiner is requested to replace his obviousness rejection of claims 4, 11, 13, 20, 22 and 26 based upon personal knowledge with either a declaration attesting to the facts or a citation of the art that contains the teaching required to produce the applicants claimed invention. The obviousness rejection is improperly based upon a combination of the examiner's personal knowledge with the Berk '992 that teaches away from shock absorbing resin by requiring a spring. Reconsideration and removal of the obviousness rejection of claims 4, 11, 13, 20, 22 and 26 is respectfully requested.

Appl. No. 10/690,187
Resp. Dated Mar. 14, 2005
Reply to OA of Nov. 12, 2004

V. Conclusion

Based on the foregoing, it is respectfully requested that all rejections be withdrawn and the application be passed to issue.

Respectfully submitted,

Lorusso Loud & Kelly LLP

Jeffrey D. Washville

Dated: 14 MAR 05

Reg. No. 46,366

15 Rye Street, Suite 312
Pease International Tradeport
Portsmouth, NH 03801
Tel.: (603) 427-0070
FAX: (603) 427-5530

Certificate Under 37 C.F.R. §1.8

The undersigned hereby certifies that this paper along with any paper or document referred to therein as being attached or enclosed, is being mailed with proper postage or faxed to (703) 872-9306 and directed to the Commissioner for Patents, Mail Stop Non-Fee Amendment, P.O. Box 1450, Alexandria, VA 22313-1450- This 14th day of MARCH 2005.

Jeffrey D. Washville